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Human rights situation in Palestine and other Occupied Arab territories

Written statement* submitted by the BADIL Resource Center for Palestinian Residency and Refugee Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The need to support the State of Palestine's accession to the International Criminal Court

1. The BADIL Resource Center for Palestinian Residency and Refugee Rights, in collaboration with the undersigned members of Palestinian Human Rights Organizations Council (PHROC), fully supports both the accession of the government of the State of Palestine to the Rome Statute, and the acceptance by the International Criminal Court (ICC) to exercise its jurisdiction over serious crimes committed in the occupied Palestinian territory (oPt), including East Jerusalem, since June 13, 2014.

2. By adhering to the Rome Statute the Palestinian government affords the ICC jurisdiction to investigate and prosecute individuals responsible for committing serious crimes that impact upon the international community as a whole, e.g. crimes against humanity, war crimes and genocide.[1]

3. Evidence collected by international and Palestinian Non-Governmental Organizations suggest that a wide range of international crimes have been committed by Israel inside the oPt during the aforementioned period. In the summer of 2014 at least 2,215 Palestinians were killed,[2] 108,000 Palestinians had their homes either destroyed or severely damaged, and the already crippled civilian infrastructure of this besieged Gaza strip suffered further extensive damage as a result of the Israeli military operation 'Protective Edge'. At the peak of the assault, 520,000[3] Palestinians were internally displaced inside the Gaza Strip, accounting for 34 per cent of its total population. In the West Bank and East Jerusalem, Israel continues its systematic practices of land appropriation and settlement expansion, which in turn contribute to a wider policy of forcible transfer of the resident Palestinian population.[4]This policy is reflected in the historical suffering of Palestinians, dating back to the Nakba of 1948, and which has produced a Palestinian refugee population today of some 7.4 million.[5]

4. As stated in the Preamble of the Rome Statute:

> "[The most serious crimes of concern to the international community as a whole must not go unpunished and [...] their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation.

This is necessary so as:

[T]o put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes."[6]

Accordingly, those criminal acts perpetrated by Israel which have produced such vast displacement and human suffering must be addressed by the international community as a matter of great urgency. Palestinian membership of the

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[1] Rome Statute of the International Criminal Court, 1998 (hereafter '*the Rome Statute*') Art.5

[2] This figure includes 556 children, and 293 women, and is derived from the collective database of four PHROC members: Al Mezan Center for Human Rights, PCHR, Al–Haq and Al Dameer

[3] OCHA, 05/08/2014. *Occupied Palestinian Territory: Gaza Emergency. Humanitarian Snapshot*. Available at: http://www.ochaopt.org/documents/humanitarian_snapshot_5_%20august%202014_opt.pdf

[4] BADIL, 2014. *A Series of Working Papers. Forced Population Transfer: The Case of Palestine*.

[5] BADIL, 2012. *Survey of Palestinian Refugees and Internally Displaced Persons 2010-2012*. Available at: http://www badil.org/en/press-releases/142-2012/3638-press-eng-53

[6] Preamble of *the Rome Statute*

ICC is an important step towards this goal; ensuring accountability for those individuals responsible for such acts, and of securing justice for their victims.

5. This is true for all parties, with the ICC possessing the ability to investigate and prosecute all crimes committed inside the oPt.[7] Thus the Palestinian Government has demonstrated its full commitment to abide by international law. Accordingly, such a step should be welcomed by all who wish to protect and promote the relevance of international law.

6. Palestinian accession to the ICC also constitutes desperately-sought progress in the ongoing quest of Palestinians seeking international recognition and justice through the application of a rights-based approach. After more than 20 years of failing to reach a fair, just and durable solution through peace negotiations conducted at the political level, Palestinian membership of the ICC – and the pursuit of universal justice - should not be considered an obstruction in the path towards peace, but rather an essential component in its realization. Indeed, the promotion of peace lies at the very heart of the ICC's purpose.[8]

7. To the contrary, where International Humanitarian Law and International Human Rights Law have been violated on a large scale and an effective judicial remedy is not available for the victims of these atrocities, neither on a national nor on an international level, this represents a direct threat to peace. Furthermore, it also critically undermines the credibility of international law and its mechanisms. Respect and protection of international law can only be guaranteed if access to effective justice is secured.

8. Yet, access to justice for Palestinians is being strongly impeded and condemned by the governments of Israel and the United States, neither of which has itself ratified the Rome Statute. This condemnation stems from the claim that Palestinian accession to the ICC will harm the Israeli-Palestinian peace negotiations; negotiations which have demonstrably failed, and which have done little to stem the multitude of rights abuses perpetrated by Israel against Palestinians inside the oPt.

9. Israel has even gone so far as freezing the Palestinian Authority's tax revenues, which it collects on the Palestinians' behalf, whilst the US has threatened to cut aid to the Palestinian Authority. These attempted impediments – conducted through means of collective punishment – not only risk serious violations of international law going unpunished, but also undermine the exercise by the Palestinian people of those rights and obligations afforded to them under international law.

10. It should also be noted that the ICC functions according to the principle of complementarity.[9] This means that national jurisdictions have the primary responsibility to investigate and prosecute serious crimes. Only if a "*State is unwilling or unable genuinely to carry out the investigation or prosecution*"[10] can the ICC intervene. As such, Palestine's accession to the ICC should be viewed as an opportunity for both Palestine and Israel to review their own internal investigative functions, and to take ownership of allegations of serious violations of International Humanitarian Lawand International Human Rights Law committed by their respective forces. Both of these outcomes clearly promote state sovereignty, individual accountability and the relevance of the rule of law.

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[7] *The Rome Statute*, Art.12

[8] W.A. Schabas, *The International Criminal Court. A Commentary on the Rome Statute*. Oxford University Press, 2010, 42.

11. Therefore it is of the utmost importance that the international community supports and encourages all steps made by the Palestinian Government to hold to account all those responsible for the perpetration of international crimes, and to pursue a fair, just and durable solution to the Israel-Palestine question through the mechanisms of international law, rather than through political bargaining. Such a rights-based approach is desperately required for both the sake of a long-suffering Palestinian population, and the relevance of international law.

12. Accordingly, we, the undersigned, call for:

    i. Wide and concerted international support for the accession of Palestine to the ICC;
    ii. Wide and concerted support for the ICC prosecutor's preliminary investigation from the international community by way of professional collaboration of States and other UN agencies with the ICC;
    iii. The international community to condemn all punitive measures directed at the Palestinian government as a result of its accession to the ICC, and to similarly condemn any measures intended to obstruct the work of the ICC;